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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,915	11/02/2001	Anthony J. Mauro	460.2115USU	7768

7590 01/19/2005

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/003,915

Applicant(s)

MAURO ET AL. *Ch*

Examiner

C. Lynne Anderson

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-17, 19-36 and 38.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: The proposed combination of claims 1, 8, and 9, which were not previously considered together, will require further consideration.

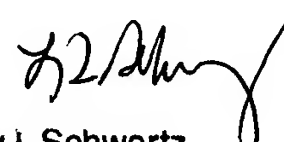
Continuation of 5. does NOT place the application in condition for allowance because: The applicant's arguments have been considered but are not persuasive.

In response to the applicant's argument that Baker discloses a tampon in a laundry list of possible devices, it is noted that patents are relevant as prior art for all they contain (see MPEP 2123). The fact that Baker discloses other embodiments aside from a tampon is irrelevant.

In response to the applicant's argument that the invention of Baker fails to fulfill the requirements of inherency, it is noted that in the cited case of Rijckaert, the issue was whether or not a diaper having two fasteners would inherently anticipate a diaper having three fasteners. This is not analogous to the instant case, where Baker clearly discloses the physical features of the claimed invention (i.e. a tampon, an antibacterial, and a finishing agent). The inherency lies in the ability of the antibacterial to react with bacteria. Since the chemical structure of the antibacterial of the instant invention and the antibacterial disclosed by Baker are identical, they will have the same physical properties (see MPEP 2112.01).

In response to the applicant's argument that Baker fails to disclose the synergistic effect observed in the instant invention, it is noted that the table bridging pages 12 and 13 of the instant specification show a synergistic effect for 2.5% Tween 20 and 1.0% BTC. The samples having only 0.25% Tween 20 do not perform significantly better than the control. Therefore, the synergistic effect is not observed in the entire claimed range, or with any of the antibacterials listed in the instant specification other than Tween 20. Due to the broadness of the instant claim, the applicant is seeking to claim embodiments for which they do not show a synergistic effect.

For these reasons, the request for reconsideration is found to be not persuasive, and the rejection stands.



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700